IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.94 OF 2004

The Commissioner of Icnome Tax,
Bombay City-X, Mumbai .. Appellant.
V/s.
J.B.A. Printing Inks Ltd. .. Respondent.

Mr.R.V. Desai, senior counsel with Mr.R. Asokan i/b. H.D. Rathod for the appellant.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 30TH NOVEMBER, 2004.

P.C. :

Heard.

2. In the memo of appeal two questions of law have been formulated which read thus :

> 1. Whether on the facts and in the circumstances of the case, and in law the Tribunal was justified in confirming the order of the CIT(A) directing the Assessing Officer to delete the addition of Rs.6,36,597/- on account of Modvat Credit ?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the CIT(A) directing the Assessing Officer to allow the claim of the assessee for deduction of Rs.3,53,979/- under Section 32AB of the Income-tax Act, 1961 as against Rs.2,82,100/- computed by the Assessing Officer, overlooking the fact that deduction under Section 32AB is available only on income chargeable to tax under the head 'Profit and Gains of Business/Profession' and not the gross income ?

3. In so far as proposed question No.1 is concerned, it is not in dispute that the controversy stands concluded by the judgment of the Supreme Court in the case of CIT V/s. Indo Nippon Chemicals Co. Ltd [261 ITR 275].

4. In so far as proposed question No.2 is concerned, the Tribunal in the impugned order observed thus :

> ". We have considered the rival submissions. The controversy is whether the direction u/s.32AB is allowable to the extent of Rs.3,53,979/- as claimed by the assessee or Rs.2,82,100/- has worked out by the A.O. without considering the income from other sources such as interest on deposits dividends and circulars on sale of assets. The A.O. refused to consider the income from other sources as eligible income for the purpose of granting deduction on the ground that such income cannot be treated as business income. But the provision of Section 32AB(3), in effect, say that the profits of the business for the purpose of granting the deduction shall be the profits computed in accordance with the requirements of Part-II and III of Schedule VI of the companies Act, 1956 and increased or reduced by certain specified amounts. Thus so long as P & L a/c. as prepared, in accordance with the recurements of companies Act, it would appear that authorities have no authority to increase or reduce the same by those items which are not specifically mentioned in the sub-section. It is undisputed that above items have not been specifically mentioned in the sub-section and, therefore, it follows that they cannot be

> excluded. This view is taken by Kerala High Court in CIT v/s. Apollo Tyres (237 ITR 706). The Bombay Benches of the I.T.A.T. are also taking the same view consistently. There is no dispute that assessee's P & L a/c. has been prepared as per the requirements of Part II & III of Schedule VI to Companies Act. Under these circumstances, we are of the view that the assessee cannot be denied the benefit of deduction in respect of the aforesaid amounts. The appeal of the revenue, therefore, fails on this ground."

5. The Tribunal relied upon the judgment of the Kerala High Court in the case of CIT V/s. Appollo Tyres [237 ITR 706]. This view of the Kerala High Court has been affirmed by the Supreme Court in the case of Appollo Tyres Ltd V/s. CIT [255 ITR 273].

6. In this view of the matter, we do not find that impugned order gives rise to any substantial question of law. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)